

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 07-17

APPLICANT

Edgewood Development Company, LLC

LOCATION OF PROPERTY INVOLVED

1034 East Street

Walpole Assessors Map 33, Parcel 23; Map 25, Parcel 162, and Map 25-265-H

APPLICATION

A SPECIAL PERMIT under Section 8 (Parking Regulations): 4 (Baseline Parking Calculation): C. of the Zoning Bylaw to allow less than the minimum parking required (211 spaces where 304 are required) as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890, as may be amended.

A VARIANCE from Section 6 (Dimensional Regulations): Table 6-B-1 (Table of Dimensional Regulations) of the Zoning Bylaw to allow a maximum building height of fifty-nine feet (59') where fifty-two feet (52') is allowed all as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890, as may be amended.

A VARIANCE Section 5 (Use Regulations), Table 5-B.1 (Use Table) Section 3 (Residential) g. (Use of a floor other than the ground floor or basement for dwelling units) i. (within the CBD) to allow a commercial to residential floor area ratio greater than 3.5 and allow 202,360 s.f. of residential area on four (4) floors all as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890, as may be amended.

On April 5, 2017 and continued on May 17, 2017, a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permits and Variances requested. The members who were present and voting:

Matthew Zuker, Chairman
Craig Hiltz, Clerk
Mary Jane Coffey, Member
Robert Fitzgerald, Associate Member

**PARKING SPACE REDUCTION
VOTE OF THE BOARD:**

A motion was made by Mr. Hiltz and seconded by Ms. Coffey, that the Board grant Edgewood Development Company, LLC, LLC a Special Permit under Section 8 (Parking Regulations): 4 (Baseline Parking Calculation): C. of the Zoning Bylaw to allow less than the

minimum parking required (211 spaces where 304 are required) as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017 last revised May 1, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890.

The vote was 4-0-0 in favor (Zuker, Hiltz, Coffey, Fitzgerald voting); therefore, the Special Permit under Section 5.B.4.w is hereby granted, subject to the following conditions:

1. The building shall be constructed as shown on the plans referenced above and presented at the Public Hearing.
2. The Applicant shall submit a parking management plan (residential, visitor, commercial, and loading, parking security and enforcement) to the reasonable satisfaction of the Community Development Director prior to the issuance of a final Certificate of Occupancy.
3. If the Applicant desires to make a change in the parking numbers it shall apply to the Board for a modification of this Special Permit.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 8.4.C to allow the requested reduction in minimum parking spaces required (211 where 304 are required). The Board finds based on ITE data and parking demand at similar projects that the proposed mixed use building will be adequately served by 211 spaces. Accordingly, the Board has determined that the Special Permit requested is warranted.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds that the requested reduction from 304 to 211 required parking spaces complies with all of the criteria of By-Law as set forth below. Accordingly, the Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the Traffic Impact Analysis (TIA) for the project was produced by the Pare Corporation ("Pare") a well-known and respected engineering firm (November 2016) submitted with the Application that there is no data to support the requirement of 304 parking spaces for this development. Using the industry accepted Institute of Traffic Engineers (ITE) data and experience with other mass-transit oriented mixed-use buildings, the

anticipated need for parking is 211 spaces. Specifically, the ITE estimates a peak demand of 1.26 spaces per unit for this type of development. 1.39 spaces per unit are provided. This conclusion was reviewed by the Town's peer reviewer (Nitsch Engineering) prior to filing wherein they noted that they "...concur with the methodology used... and the conclusion that the Liberty Village Apartments will have no significant impact to the safety and capacity of the surrounding roadway network." The Town's fiscal peer reviewer (RKG Associates) also estimated there will be 1.27 per household or 189 vehicles; well within the number of spaces provided. Employing a local example, the 120 unit (210 bedrooms) Edgewood Apartments in Plainville, MA with no commuter rail or nearby bus line showed a demand of 1.36 spaces per unit (or 0.78/bedroom) where 1.87 spaces were supplied. It should also be noted that there are currently 16 on-street spaces on Glenwood Avenue, seven (7) spaces on East Street and nine (9) spaces on Elm Street. All of these spaces will be available post-construction. Accordingly, there is no adverse effect to the immediate neighborhood if the requested relief is granted. As such, this criterion is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that the development will not have a negative impact regarding residents, employees, customers, or visitors as such a reduction in parking numbers does not have an adverse effect on the immediate neighborhood. NOTE: The immediate neighborhood is composed primarily of parking lots and the commuter rail line. The Walpole Downtown Action Plan (August 2105) specifically recommends additional multi-family residential development within the Central Business District (CBD) to "...support existing and potential future retail..." uses in the area. The plan further states that up to 650 residential units could be supported ...primarily in multi-family structures (page 19 & 27 Goal #3 of the Recommendations section). As stated at the public hearing, the ITE estimate indicates that a parking ratio of 1.22 is sufficient where the Applicant is proposing a ration of 1.39. The above referenced data confirms the Proposal will not have a negative impact on traffic or pedestrian safety and this criterion is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that the proposed development conforms to all dimensional regulations of the Walpole Zoning By-Law except for building height and floor area ratio. This petition requests the applicable Variances and Special Permits to allow the project to be built as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated 02, 2017 last revised May 1, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890, as may be amended. Said petition is being heard as part of the present case before the Board. Additionally, allowed lot coverage is 100% and the buffer zone requirements do not apply. It should be noted that the existing lot coverage is 100% but the Proposal includes landscaping around the building and the creation of an additional 2,410 square feet (SF) of landscaping abutting the Neponset River which is currently paved. Thus, the proposal 8,331 s.f. of open space is a significant improvement over existing conditions. Additionally, at the request of several Town Boards, the Applicant is removing parking from Lot 2 and replacing the same with a turn lane and additional landscaping, further improving the area. Therefore, the Board is satisfied that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the requested relief is asking for a reduction of required parking spaces which is not a use in and of itself nor will it generate any hazard or waste. Therefore, there is no danger to the immediate neighborhood through fire, explosion, emission of wastes, or other causes. Accordingly, this criterion is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the open-air parking and covered garage use do not, in of themselves, create any vibration, dust, heat, smoke, glare or other nuisance. In fact, the reduction will in all likelihood reduce any nuisance that would be associated with a the current underutilized and structurally questionable building. Furthermore, the immediate neighborhood consists predominantly of parking lots and several businesses so there are no expected impacts on residences. The fumes and noise generated by the cars parking in the garage will be mitigated through proper ventilation. Moreover, situating the parked cars within a garage versus parking on an open lot mitigates noise, glare, and other nuisances. As such, the garage better protects the immediate neighborhood from these nuisances. Therefore, this condition is satisfied.

(g) shall not adversely effect the character of the immediate neighborhood; and

The Board finds the immediate neighborhood consists predominantly of parking lots, the MBTA rail line and several businesses. The development will provide commercial/retail space at street level with residences being located on the upper floors. This arrangement is similar to all the existing mixed use buildings in the CBD. The existing buildings on the locus are an eyesore will be removed and replaced with a new structure employing building materials which will reflect the Towns' history. This is a direct benefit and will significantly improve the character of the neighborhood and the Town. Second, a complex of deteriorating buildings will be developed into residential housing fulfilling one of the Town's goals in the Downtown Action Plan as noted above. Last, the new retail space with residential space above will add vitality the neighborhood and will financially support downtown businesses – fulfilling another goal of the Downtown Action Plan. As such, the reduction in required parking enables the Applicant to develop the area in a manner more consistent with the immediate neighborhood and the center of town. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that Section 8.1 of the Bylaw states that “the intent of the Parking provisions is to encourage a balance between compact pedestrian-oriented development and necessary car storage.” Given its close proximity to the Downtown and the MBTA station, the Applicant has designed the project to have 1.39 spaces per residential unit or 211 spaces in total. Further, the proposed parking arrangement is consistent with the provisions of Section 8.9 of the Bylaw in supporting the intent for the CBD as a “walkable, mixed-use environment.” Thus, the Proposal is compatible with the by-laws and more specifically the CBD zoning district.

Accordingly, this condition is satisfied.

BUILDING HEIGHT VARIANCE VOTE OF THE BOARD

A motion was made by Mr. Hiltz and seconded by Ms. Coffey, that the Board grant Edgewood Development Company, LLC a Variance from Section 6 (Dimensional Regulations): Table 6-B-1 (Table of Dimensional Regulations) of the Zoning Bylaw to allow a maximum building height of fifty-nine feet (59') where fifty-two feet (52') is allowed all as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017 last revised May 1, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890.

The vote was 4-0-0 in favor (Zuker, Hiltz, Coffey, Fitzgerald voting); therefore, the Variance from Section 6-B-1 is hereby granted, subject to the following conditions:

1. The building shall be constructed as shown on the plans referenced above and presented at the Public Hearing.
2. All rooftop mechanical equipment shall be appropriately screened.
3. The Applicant shall use good faith efforts to work with the Town to maintain landscaping in the area that was gifted to the Town and in front of the building entrance.
4. The Applicant shall work with the Community Development Director to ensure the final design of the building remains substantially similar to the project as presented at the public hearing prior to the issuance of a Building Permit. The design of the building shall include, but is not limited to, appropriate window treatments, façade materials (such as brick), and other architectural elements as appropriate all as shown on the plans presented during the public hearing. The aforesaid design shall be completed to the reasonable satisfaction of the Community Development Director.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 2.3 to justify the requested height Variance. The Board finds that building height of fifty-nine feet (59') is required due unique circumstances, a literal enforcement of the 52' height would cause undue hardship, and that the proposed building height does not cause a detriment to the public good or derogate from the intent and purpose of the Bylaw for the Central Business District. Accordingly, the Board has determined that the Variance requested is warranted.

FURTHER FINDINGS

Section 2: Administration, 3. Variances provides that the Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a variance from the terms of this Bylaw where the Board of Appeals finds:

1. Section 2.3 First Clause

Owing to circumstances relating to soil conditions, shape or topography of such

parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship financial or otherwise, to the appellant or petitioner and

The Board finds lot has unique soil conditions due to the proximity of the locus to the Neponset River. Ground water is extremely high and the basement of the existing building frequently floods during periods of heavy rains. There is a direct connection to the Neponset River which literally backs up into the existing structure when the river is at flood stage. As a result, the new structure must be raised sufficiently above the ground water so as to provide sufficient storage capacity for storm-water from the site which currently flows directly into the Neponset River with no treatment. The stormwater will also be treated (improving water quality) and released back into the river in a timed manner which will reduce flooding. Due to the wet soils, the basement is not usable and no basement is included in the future re-development of the property. Furthermore, the topography of the area slopes down from Main Street to the Neponset River which is less the twenty feet from the building. Accordingly, the groundwater under the Locus is very high resulting in basement flooding. Such conditions require the building changes noted above. As such, the parking garage must be located at ground level, which in turn increases the building height approximately thirteen feet (13'). Noting that the requested variance is for seven feet (7') it can be seen that the unique restrictions caused by the proximity of the Neponset River have created a problem for the development. In order to comply with the literal terms of the Bylaw, the Applicant would be faced with placing the parking garage below the level of the Neponset River or redesigning the building to such an extent that it would be significantly less attractive, require other zoning relief, and potentially become uneconomic to build. Moreover, it would result in a design not consistent with the goal and objectives of the Central Business District, which include, "to provide for a center of business activity accessible by pedestrian travel, to provide a center for municipal and cultural activities, and to act as a landmark and symbol of the Town." Finally, the additional height allows for a more appealing building with desirable ceiling heights thereby attracting quality tenants and users which will benefit the Town and the neighborhood.

The Board also references the height comparison submitted by the Applicant during the public hearing. As shown in the Applicant's testimony the existing five (5) story building on Glenwood Avenue built over 10 years ago is 52'. That building has first floor commercial space and four floors of residential living. Building the exact same building to current building standards and market requirements would increase its height 6.8' or a total height of 58.8'. Thus, the same building now requires additional height to accommodate current market requirements. Thus, a literal enforcement of the Bylaw would require the Applicant to build a sub-standard building, which would be a substantial hardship. The Board further notes, as stated above, a redesign of this magnitude would make the building uneconomic.

Additionally, the Zoning By-Law itself imposes a requirement for commercial space on the first floor. This requirement also imposes practical constraints on the design of the building, as the commercial tenant space along West Street must be suitable for commercial tenants. As such, the height of the building along West Street is several feet higher than it would be if the building were allowed to be solely residential. If the ceiling height of the commercial space and residential floors were dropped, the building would be more in conformance with the Zoning Bylaws, however it would likely be un-rentable and therefore remain vacant to the detriment of the Applicant and the Town. Therefore, this requirement is satisfied.

2. Section 2.3 Second Clause

That desirable relief may be granted without substantial detriment to the public good and

The Board finds that the proposed development to be up to seven feet (7') higher than otherwise allowed will not be a detriment to the public good. The design of the building is such that there is no significant difference in the shadow cast by the building as a result of the requested seven-foot (7') height increase. Additionally, as a result of the slope of the lot and based on diagrams presented at the public hearing, the massing and scale of the proposed building will be entirely consistent with this location in the Central Business District. The Board also references the shadow studies presented at the public hearing, whereby the Applicant demonstrated to the Board's satisfaction that the additional height of the building will not have a significant impact on adjacent properties or detrimental to the public good. More importantly, an existing undeveloped building will be removed and replaced with a new building. This is a direct benefit to the neighborhood and the Town. Additionally, an underperforming property will be developed into residential housing fulfilling one of the Town's goals of its Walpole Downtown Action Plan (August 2015). Also, the new residents will generate new tax revenues and the building will have a positive fiscal impact on the community. This was affirmed by the Kirk Fiscal Impact Analysis which was peer reviewed and accepted by the Town's consultant RKG Associates. Last, the new residences will add vitality to the neighborhood and support downtown businesses through spending – fulfilling another goal of the Downtown Action Plan. Thus, the proposed multi-use development is not a substantial detriment to the public good but instead is a significant benefit to the neighborhood, the general public and the Town by fulfilling one of the Town's goals in its Downtown Action Plan and it is the Applicant's hope that the new structure will hopefully serve as a catalyst for similar development elsewhere in the downtown. As such, this requirement is met.

3. Section 2.3 Third Clause

Without nullifying or derogating from the intent and purpose of this Bylaw.

The Board finds that purposes of the Zoning Bylaw include, "to encourage housing for persons of all income levels, to facilitate the adequate provision of transportation, prevention of blight, to support the economic wellbeing of the Town, and to encourage the most appropriate use of the land." In allowing the proposed project to be built as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890, as may be amended, the Board will be furthering these purposes. It should also be noted that the general intent of the building height requirement is to prevent buildings from over-whelming their abutters and from blocking sunlight. The proposed building height (up to 59'0") will only be 9% over the allowed 52 feet. As noted above, topographically the site drops down from Main Street so the building will not tower over the abutting buildings on Main Street. The scale in relation to nearby buildings can be seen on the accompanying Context Plan (Sheet A-10). Parking lots are located to the south and the north and the MBTA rail line is to the west. As a result, there are virtually no immediate abutters which could potentially be impacted by the Variance if granted. As such, this project is completely in harmony with the purpose and intent of the Bylaw. Therefore, this requirement is satisfied.

VOTE OF THE BOARD

A motion was made by Mr. Hiltz and seconded by Mr. Fitzgerald, that the Board grant Edgewood Development Company, LLC a Variance Section 5 (Use Regulations), Table 5-B.1 (Use Table) Section 3 (Residential) g. (Use of a floor other than the ground floor or basement for dwelling units) i. (within the CBD) to allow a commercial to residential floor area ratio greater than 3.5 and allow 202,360 s.f. of residential area on four (4) floors all as shown on the plans entitled: "Development Plans for 1034 East Street, Walpole, MA" dated February 02, 2017 last revised May 1, 2017, drawn by Waterfield Design Group, 50 Cross Street, Winchester, MA 01890.

The vote was 4-0-0 in favor (Zuker, Hiltz, Coffey, Fitzgerald voting); therefore, the Variance from Section 8.8.A is hereby granted, subject to the following conditions:

1. A minimum of 8,000 s.f. of the ground floor space, shall be reserved for leasing to 3rd parties to operate commercial/retail businesses for public use therein.
2. The Applicant shall submit a parking management plan (residential, visitor, commercial, and loading) to the reasonable satisfaction of the Community Development Director prior to the issuance of a final Certificate of Occupancy.
3. If the Applicant desires to make a change in the amount of commercial/ retail space it shall apply to the Board for a modification of this Variance.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 2.3 to justify the requested Variance from the required commercial - residential required floor area ratio. The Board finds that the variance from the Floor Area Ratio (FAR) requirements is justified as a result of unique circumstances, a literal enforcement of the Bylaw would cause undue hardship, and that the proposed parking layout does not cause a detriment to the public good or derogate from the intent and purpose of the Bylaw for the Central Business District. Accordingly, the Board has determined that the Variance requested is warranted.

FURTHER FINDINGS

Section 2: Administration, 3. Variances provides that the Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a variance from the terms of this Bylaw where the Board of Appeals finds:

1. Section 2.3 First Clause

Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship financial or otherwise, to the appellant or petitioner and

The Board finds that the locus has a unique shape and large size, not common to

the district generally. While the shape of the locus is generally square, the lot is unique in that it has three (3) front yards as defined in the By-law. It has frontage on Elm Street, East Street and Glenwood Avenue. Further, a review of the Assessors plans also show the lot is substantially larger than the majority of lots in the neighborhood adding to its uniqueness. Additionally, most of the existing buildings were generally constructed over 100 years ago. They are functionally obsolete and are deteriorating despite past efforts to maintain them. A structural engineer has determined the main building to be beyond repair. The specific technical details and structural engineering report were submitted with the Application. NOTE: Because of this report, the Walpole Historical Commission voted unanimously to allow the demolition of the structures despite their age and historical significance (the letter was also submitted with the Application). Based on today's building and fire codes renovating these buildings would require substantial modifications and upgrades to the structure and its foundations – which are not structurally possible. Therefore, the entire site must be demolished and any new building constructed from the foundation up. The cost of such a redevelopment precludes any construction that does not include a sizeable residential component without undue economic hardship.

Additionally, the lot has unique soil conditions due to the proximity of the locus to the Neponset River. Ground water is extremely high and the basement of the existing building frequently floods during periods of heavy rains. There is a direct connection to the Neponset River which literally backs up into the existing structure when the river is at flood stage. As a result, the new structure must be raised sufficiently above the ground water so as to provide sufficient storage capacity for storm-water from the site which currently flows directly into the Neponset River with no treatment. The stormwater will also be treated (improving water quality) and released back into the river in a timed manner which will reduce flooding. Due to the wet soils, the basement is not usable and no basement is included in the future redevelopment of the property. Based on these factors, the commercial space must be reduced to accommodate ground floor parking, which could otherwise be located underground.

The Board further finds that the current Liberty Village site contains approximately 63,270 s.f. of commercial floor area. However, 24,540 s.f. is currently vacant and has been for years. Of the occupied commercial space, 30,743 s.f. is devoted to industrial or manufacturing uses not allowed in the CBD. Accordingly, there are on 7,987 s.f. of commercial space being used by businesses allowed within the CBD. The Applicant is proposing 14,008 s.f. be reconstructed as commercial space, effectively doubling the current commercial floor area available for allowed uses, either by right or by special permit, in the CBD.

The requested ratio of residential to commercial is required for the project based on the unique nature of the lot to be economically feasible in today's market. As a result, removal and replacement of the structures is the only viable alternative. Based on the Applicant's analysis of construction 152 units are the minimum required to allow the project to be undertaken. Additionally, it must be noted that the project becomes uneconomic if the residential area becomes any smaller due to the costs associated with the demolition and removal of the existing structures and the cost to construct the proposed building. Accordingly, this requirement is satisfied.

2. Section 2.3 Second Clause

That desirable relief may be granted without substantial detriment to the public good and

The Board finds that, as stated above, that this project will provide commercial / retail space in excess of what exists on-site for allowed uses in the CBD. The project not located

on Main Street or in the center of the CBD and will not diminish the current available commercial/retail space in the center of Town. It will also remove an existing undeveloped building from the center of Town and replace it with a new building that will significantly enhance the visual appeal of the downtown area especially as people enter from Elm Street. This is a direct benefit to the neighborhood and the Town. An underperforming property will be developed into residential housing fulfilling one of the Town's goals of its Walpole Downtown Action Plan (August 2015). Also, the new residents will generate new tax revenues and the building will have a positive fiscal impact on the community. All of aforesaid were corroborated by the Fiscal Impact Analysis and Peer Reviews submitted with the Application. Last, the new residences will add vitality the neighborhood and support downtown businesses through spending – fulfilling another goal of the Downtown Action Plan. As such, the proposed multi-use development is not a substantial detriment to the public good but instead is a significant benefit to the neighborhood, the general public and the Town. The Board also notes that over twenty (20) downtown businesses sent letters of support during the public hearing. Therefore, there is no detriment to the public good and this requirement is satisfied.

3. Section 2.3 Third Clause

Without nullifying or derogating from the intent and purpose of this Bylaw.

The Board finds that the requested increase in the residential square footage relative to the commercial space is beneficial to the downtown and in harmony with the intent and purpose of the By-Law. If the Applicant were required to devote the entire ground floor to commercial uses, there would be insufficient space for required parking to support the residential use necessary to develop the location and to avoid an economic hardship. It would limit development of the location to a large single commercial use that would directly contradict the Town's goals in the Downtown Action Plan "to provide for a center of business activity accessible by pedestrian travel" and likely result in the continuation of the high vacancy of commercial space and a negative impact on the existing businesses as seen in other surrounding towns. The Board also notes as stated above, that over twenty (20) downtown businesses sent letters of support during the public hearing. Adding additional residential growth is in full compliance with the goals of the Report. As a result, the Board finds that the requested relief can be granted without nullifying or substantially derogating from the intent or purpose of the By-Law. Accordingly, this Variance furthers the purposes of facilitating adequate transportation, housing of all income levels, supporting the economic well-being of the Town, and encouraging the most appropriate use of the land. Thus, this requirement is met.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

Said Special Permits are granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if

construction has not begun by such date except for good cause.”

Massachusetts General Laws c. 40A, §11 provides in part as follows: “A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

Said Variances are granted pursuant to Massachusetts General Laws c. 40A, s. 10 which provides in pertinent part as follows: “If the rights authorized by a Variance are not exercised within one year of the date of grant of such Variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application thereof, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.”

Massachusetts General Laws c. 40A, s. 11 provides in pertinent part as follows:

“...No Variance or Special Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded at the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.”

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Craig W. Hiltz, Clerk

CH/am

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on May 17, 2017 and filed with the Town Clerk on May 31, 2017.